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Letter Ruling 95-9: Returnable Gas Containers

July 13, 1995

This letter is to inform you that the Commissioner herein rescinds the advice given to ***** by letter from Francis P. Holland, Chief, Bureau of Sales Excise, dated June 7, 1976.

The letter stated that "the rentals of returnable containers in connection with the retail sale of the contents are exempt from Massachusetts sales and use tax, as are the rentals of containers which are rented with the contents when the sale of the contents is exempt."

That statement was in error as applied to the facts in your case.

General Laws chapter 64H, § 6(q) states that the following sales and gross receipts there from are exempt from the sales tax:

Sales of ... (2) containers when sold with the contents if the sale price of the contents is not required to be included in the measure of the taxes imposed by this chapter; (3) returnable containers when sold with the contents or resold for refilling. As used in this paragraph the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse.

Id., as amended by St. 1981, c. 571, § 1 in ways which do not alter the determination made here.

The Commissioner promulgated Letter Ruling 79-30 on August 31, 1979 which examined facts nearly identical to those of ***** . In that letter ruling, the Commissioner determined that gas cylinders for which a separate rental charge was billed at the end of a month were not containers "sold with the contents" under G.L. c. 64H, § 6(q)(3).

The letter ruling concluded that "rentals of returnable gas cylinders, where the rental fee is based on the number of cylinders in the possession of customers at the end of each month, are not exempt from the Massachusetts sales tax under General Laws chapter 64H, § 6(q)(3)."

To the extent the advice given in the June 7, 1976 letter might be viewed as a "ruling" of the

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Department of Revenue (a matter which the Commissioner does not concede) the Commissioner of Revenue herein revokes such advice and purported ruling pursuant to 830 CMR 62C.3.2(8) and rules instead that ***** is required to collect sales tax on these transactions under the quoted provision of the statute.

Very truly yours,

/s/Mitchell Adams

Mitchell Adams
Commissioner of Revenue

MA:HMP:JET

LR-95-9